

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

RICHARD DAVID ISER,

Defendant-Appellant.

UNPUBLISHED

July 27, 1999

No. 212833

Antrim Circuit Court

LC No. 97-003133 FH

Before: White, P.J., and Markey and Wilder, JJ.

MEMORANDUM.

Defendant appeals by right his sentence of six to fifteen years' imprisonment for his conviction of second-degree criminal sexual conduct, MCL 750.520c(1)(a); MSA 28.788(3)(1)(a). We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Defendant pleaded guilty to one count of criminal sexual conduct in the second degree, with an offense date of 1989, in exchange for dismissal of a charge of criminal sexual conduct in the fourth degree, MCL 750.520e(1)(b); MSA 28.788(5)(1)(b), and an agreement by the prosecutor to forego charging him with other offenses involving the victim, his adopted daughter. The court sentenced defendant to six to fifteen years in prison, with credit for one day served. In doing so, the court exceeded the guidelines, which recommended a minimum term range of twelve to forty-eight months, because the victim was defendant's daughter, the conduct continued for a number of years, and defendant forced the victim to engage in oral sex on multiple occasions.

Defendant argues that his sentence is disproportionate because the trial court's stated reasons for exceeding the guidelines are already accounted for in the guidelines. We disagree and affirm. Sentence length is reviewed pursuant to the principle of proportionality. *People v Milbourn*, 435 Mich 630, 636; 461 NW2d 1 (1990). The key test of the proportionality of a sentence is whether it reflects the seriousness of the matter. *People v Houston*, 448 Mich 312, 320; 532 NW2d 508 (1995). The sentencing guidelines are designed to assist the court in determining where a particular defendant falls on the sentencing continuum. *People v Mitchell*, 454 Mich 145, 177; 560 NW2d 600 (1997). A court may justify a sentence that exceeds the guidelines by referring to factors that are not adequately weighed in the guidelines, as well as to factors that the guidelines do not consider. *People v Castillo*, 230 Mich

App 442, 448; 584 NW2d 606 (1998). Here, the parent-child relationship received some consideration in the guidelines in that Offense Variable (OV) 15 was scored at fifteen points due to defendant's abuse of his authority over the victim.

Also, the trial court's consideration of factors not adequately addressed in the guidelines is more compelling when a plea is entered in exchange for dismissal of other charges. *People v DuPrey*, 186 Mich App 313, 318; 463 NW2d 240 (1990). Defendant pleaded guilty in return for the dismissal of one charge and the prosecutor's agreement to forego bringing other charges. Finally, other criminal acts, including forced oral sex, were not accounted for in the scoring of OV 25 (contemporaneous criminal acts) at fifteen points. Accordingly, the departure was justified by the seriousness of the circumstances surrounding the offense and the offender, and the court adequately explained its reasons for departing from the guidelines. *People v Fleming*, 428 Mich 408, 428; 410 NW2d 266 (1987); MCR 6.425(D)(1).

We affirm.

/s/ Helene N. White
/s/ Jane E. Markey
/s/ Kurtis T. Wilder